

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 13TH DAY OF AUGUST 2021 / 22ND SRAVANA, 1943

WP(C) NO. 16044 OF 2021

PETITIONER/S:

1 KARTHIKA SUMESH ALIAS KARTHIKA THANKARAJ
AGED 28 YEARS

2 SUMESH KUMAR T.S.,
AGED 38 YEARS

BY ADVS.

V.N.SANKARJEE

V.N.MADHUSUDANAN

R.UDAYA JYOTHI

M.M.VINOD

M.SUSEELA

KEERTHI B. CHANDRAN

VIJAYAN PILLAI P.K.

C.PURUSHOTHAMAN NAIR

SANAL C.S

NITHEESH.M

RESPONDENT/S:

1 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
DISTRICT - 695001.

- 2 THE DIRECTOR OF HEALTH SERVICE
PALAYAM-AIRPORT ROAD,
NEAR GENERAL HOSPITAL ROAD JUNCTION,
THIRUVANANTHAPURAM DISTRICT, KERALA - 695035.
- 3 THE DISTRICT MEDICAL BOARD, ERNAKULAM,
REPRESENTED BY ITS CHAIRMAN,
DISTRICT MEDICAL OFFICER, GOVERNMENT HOSPITAL,
ERNAKULAM DISTRICT, KOCHI - 682011.
- 4 THE DISTRICT MEDICAL OFFICER,
GOVERNMENT HOSPITAL,
ERNAKULAM DISTRICT, KOCHI - 682011.
- 5 THE DISTRICT LEVEL MONITORING COMMITTEE,
ERNAKULAM (CONSTITUTED UNDER SECTION 4 (b) OF THE
MEDICAL TERMINATION OF PREGNANCY ACT, 1971),
REPRESENTED BY ITS CHAIRPERSON CHIEF MEDICAL
OFFICER, GENERAL HOSPITAL, ERNAKULAM, ERNAKULAM
DISTRICT, KOCHI - 682011.
- 6 THE DIRECTOR
LAKSHMI HOSPITAL, DIWAN'S ROAD, ERNAKULAM,
ERNAKULAM DISTRICT, KOCHI - 682016.
- 7 DR. SREELATHA WARRIER,
MBBS, MD, OBSTETRICS & GYNECOLOGY (REG.NO. 20897)
LAKSHMI HOSPITAL, DIWAN'S ROAD, ERNAKULAM
DISTRICT, KOCHI - 682016.
- 8 ADDL.R8. THE SUPERINTENDENT,
MEDICAL COLLEGE HOSPITAL, KOTTAYAM.
ADDL.R8 IS IMPLEADED AS PER ORDER DATED
09.08.2021 IN WP(C) 16044/2021

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 13.08.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

W.P.(C) No.16044 of 2021

JUDGMENT

The first petitioner is the wife of the second petitioner. The first petitioner is pregnant and the gestation of her pregnancy corresponds to 22 weeks. The petitioners seek, in this proceedings, directions to the respondents to allow the first petitioner to terminate her pregnancy medically. It is alleged by the petitioners that since the outer time limit prescribed in terms of the provisions of the Medical Termination of Pregnancy Act, 1971 for termination of the pregnancy is over, the respondents are refusing to terminate her pregnancy. The case set out by the petitioners in the writ petition is that the continuance of the pregnancy would involve a risk to the life of the first petitioner . It is also the case of the petitioners that there is a substantial risk that if the child were born to the first petitioner, it would suffer from physical and mental abnormalities.

2. Heard the learned counsel for the petitioners as also the learned Government Pleader.

3. On 9.8.2021, this court passed the following interim order :

"The Superintendent, Medical College Hospital, Kottayam is impleaded *suo motu* as the additional eighth respondent in the writ petition.

2. The Permanent Medical Board constituted at the Medical College Hospital, Kottayam in terms of G.O.(Rt) No.2444/2020/H&FWD dated 31.12.2020 is directed to examine the first petitioner and give a report before this Court as to whether continuance of her pregnancy would involve a risk to her life or any grave injury to her physical or mental health. The Medical Board shall also examine whether there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

3. The first petitioner shall make herself available before the additional eighth respondent along with a copy of this order and the said respondent shall immediately make necessary arrangements for her examination by the Permanent Medical Board.

List this matter on 13.08.2021."

4. Based on the interim order aforesaid, the Permanent Medical Board at the Medical College Hospital, Kottayam examined the first petitioner on 11.8.2021 and the report of medical examination is made available to the Court. The relevant portion of the report of the Permanent Medical Board reads thus:

"She is primigravida, married 10 months, with LMP on 9/3/21: GA : 22 wks. H/o ANC from Lekshmi Hospital, Ernakulam, NT scan at 12 wks was normal. Anomaly scan on 26/7/21 showed bilateral hypoplastic nasal bone. Amniocentesis and FISH analysis showed abnormal sex chromosome (Klinefelter syndrome).

Past history of CVA with seizures at 2 1/2 yrs of age on tab: Zeptol 200mgBd; Frisium 20mgBD, Levigress, 100mg BD. H/O visual impairment and delayed milestones.

O/E patient conscious and cooperative & needs support for activities.

Pulse rate : 72 per mt, BP:110/70mm of Hg, Ht.155cm, wt.71kg

RS/CSV :NAD,

P/A Ut.22 wks foetal parts +

USG (11/8/21 from Dept.of Radio Diagnosis, GMCK)

SLIUP 21wks 1 day variable presentation. Nasal bone length right : 6.6mm, left 7.0mm(>5th percentile, normal for Indian population). No gross congenital anomalies, uterine artery Doppler normal).

Cardiology & Pulmonology Opinion : Foetal cardio echo normal; persons with Klinefelter syndrome have increased risk of metabolic cardio vascular disease in long run. It is not a life threatening abnormality.

Neurology Opinion : The mother has mild mental retardation, visual disturbances, seizures, and weakness of (L) lower limb with a permanent disability of 55% as certified by District Medical Board, Ernakulam. The foetus has no brain malformations on USG, Amniocentesis and FISH revealed klinefelter syndrome. Neurological manifestations of Klinefelter syndrome include mental subnormality, dyslexia, ADHD. However it is not a life threatening condition.

Phychiatry opinion : The mother has mild mental retardation and impaired adaptive skills. She might find it difficult to cope with the child rearing demands of a baby with disability.

Paediatrics opinion : Klinefelter syndrome is a chromosomal anomaly associated with variable mental subnormality, endocrine problems, and psychological issues in later life. However it is not a life threatening disorder.

Medical Board Opinion :

Klinefelter syndrome is a chromosomal anomaly associated with variable mental subnormality, endocrine problems, and psychological issues in later life. However it is not a life threatening disorder.

Since mother (Karthika Sumesh) has mild mental retardation and impaired adaptive skills. She might find it difficult to cope with the child rearing demands of a baby with disability.

For the above mentioned reasons, MTP is recommended."

5. As evident from the report, the fetus is suffering from Klinefelter syndrome. The first petitioner is a person suffering from mild mental retardation, visual disturbances, seizures and weaknesses of the left lower limb with a permanent disability of 55%. Though it is stated in the opinion that Klinefelter syndrome is not a life threatening disorder, if the said fetus disorder is analysed in the light of the provision contained in sub-Section(3) of Section 3 of the Act, it can be seen that this is a case where it can be held that the continuance of the pregnancy of the first petitioner would involve injury to the physical and mental health of the first petitioner. I take this view

also for the reason that the Permanent Medical Board consisting of 8 expert doctors have recommended for medical termination.

6. The freedom of a pregnant woman in making a choice as to whether the pregnancy should be continued cannot be taken away. Likewise, the right of the mother to terminate the pregnancy medically even after the permissible period in terms of the provisions of the Medical Termination of Pregnancy Act, has been recognised by the courts, if there is substantial risk that if the child were born, it would suffer from abnormalities as to be seriously handicapped.

In the result, the writ petition is allowed and the first petitioner is permitted to undergo the procedure for termination of the pregnancy. The respondents concerned would be free to undertake the said procedure at the risk of the first petitioner.

Sd/-
P.B.SURESH KUMAR, JUDGE.

rkj

APPENDIX OF WP(C) 16044/2021

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE MARRIAGE CERTIFICATE NO. 400523/CRCM01/GENERAL/2020/481 DATED 20.10.2020.

Exhibit P2 TRUE COPY OF THE DISABILITY CERTIFICATE NO. MB/712/17 DATED 30.03.2017 ISSUED BY THE DISTRICT MEDICAL BOARD, ERNAKULAM.

Exhibit P3 TRUE COPY OF THE TEST RESULT OF THE ULTRASOUND SCAN DATED 08.06.2021 OF THE 1ST PETITIONER DONE AT LAKSHMI HOSPITAL, ERNAKULAM.

Exhibit P4 TRUE COPY OF THE OB-2/3 TRIMESTER SCAN REPORT OF THE 1ST PETITIONER DATED 26.07.2021 ISSUED FROM THE 6TH RESPONDENT HOSPITAL.

Exhibit P5 TRUE COPY OF THE FLUORESCENCE IN SITU HYBRIDIZATION (FISH) REPORT DATED 2.8.2021 ISSUED BY LILAC INSIGHTS.

Exhibit P6 TRUE COPY OF THE CERTIFICATE DATED 7.8.2021 ISSUED BY THE 7TH RESPONDENT TOGETHER WITH THE TYPEWRITTEN COPY.